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IN THE
Supreme Court of the United States
OCTOBER TERM, 1958

No. ~~522~~ 3

FRANCISCO ROMERO,

Petitioner,

against

INTERNATIONAL TERMINAL OPERATING CO., COM-
PANIA TRANSATLANTICA, also known as SPANISH
LINE and GARCIA & DIAZ, INC., and QUIN LUMBER
CO., INC.,

Respondents.

**BRIEF FOR RESPONDENT INTERNATIONAL
TERMINAL OPERATING CO.**

JOHN P. SMITH,
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IN THE
Supreme Court of the United States

OCTOBER TERM, 1957

No. 322

FRANCISCO ROMERO,

Petitioner,

against

INTERNATIONAL TERMINAL OPERATING CO., COMPANIA TRANS-
ATLANTICA, also known as SPANISH LINE and GARCIA &
DIAZ, INC., and QUIN LUMBER CO., INC.,

Respondents.

**BRIEF FOR RESPONDENT INTERNATIONAL
TERMINAL OPERATING CO.**

Opinions Below

The opinion of the District Court is reported in 142 F. Supp. 570. The opinion of the Court of Appeals for the Second Circuit is officially reported in 244 Fed. (2d) 570.

Question Presented

The only question raised upon appeal as against respondent International Terminal Operating Co. (hereinafter referred to as International) is whether, in an action brought on the civil side of the District Court, the District Court had jurisdiction of the action although there was no diversity of citizenship between petitioner and all respondents.

Statement

Petitioner has been granted certiorari to review the judgment of the Court of Appeals which affirmed the judgment of the District Court dismissing the complaint as to all respondents.

Petitioner, a seaman aboard the S.S. Guadalupe, brought this action on the civil side against four respondents, alleging the following causes of action in his amended complaint:

1. Under the provisions of the Jones Act and the general maritime law against the respondents Compania Transatlantica (hereinafter referred to as Spanish Line) and Garcia & Diaz, Inc.
2. Under the general maritime law for maintenance and cure against Spanish Line and Garcia & Diaz.
3. In negligence against respondent International.
4. In negligence against respondent Quin Lumber Co., Inc. (hereinafter referred to as Quin).

Petitioner was injured while performing his duties aboard the S.S. Guadalupe at Pier No. 2, Hoboken, New Jersey, on or about May 12, 1954 (197a-206a).

It was stipulated by all parties that (1) petitioner is a subject of Spain; (2) the Spanish Line is a Spanish corporation; (3) Garcia & Diaz is a New York corporation;

(4) respondent International is a Delaware corporation; (5) respondent Quin is a New York corporation; (6) the S.S. Guadalupe was owned by the Spanish Line; (7) the S.S. Guadalupe was registered under the Spanish flag; (8) the voyage of the S.S. Guadalupe started from Spain for various ports; (9) petitioner was employed by the Spanish Line aboard the S.S. Guadalupe; (10) respondent Quin was an independent contractor hired by Garcia & Diaz to install cargo fittings aboard the S.S. Guadalupe; and (11) respondent International had a contract with Garcia & Diaz to load cargo (2a-4a, 10a-12a, 14a-23a).

Testimony was taken on two issues: (1) management, operation and control of the S.S. Guadalupe on May 12, 1954, and (2) as to the contract under which the petitioner was a crew member on the S.S. Guadalupe on May 12, 1954 (248a-251a).

The Court found that Garcia & Diaz did not have management, operation and control of the vessel (249a) and that petitioner had certain rights against the Spanish Line by way of pension for life and for maintenance and cure (250a-251a).

On motion by each of the respondents for a dismissal of the complaint on the ground of lack of jurisdiction of the subject matter (194a) and upon the refusal of the petitioner to amend his complaint and proceed upon diversity jurisdiction at law against the respondents Garcia & Diaz, International and Quin (189) or to proceed by libel in admiralty against said respondents (190a), the Court dismissed the complaint for the reasons stated in his opinion (251a-252a).

POINT I

The complaint was properly dismissed as against the respondent International Terminal Operating Co.

The jurisdiction of the District Court of the respondent International was predicated upon diversity of citizenship (28 U.S.C.A. 1332).

In order for a Federal Court to have jurisdiction for diversity of citizenship, all of the parties on one side must be diverse from all of the parties on the other side.

Treinies v. Sunshine Mining Co., 308 U. S. 66, 71;

Camp v. Gress, 250 U. S. 308, 312;

Strawbridge v. Curtis, 3 Cranch. 267.

Both petitioner and respondent Spanish Line were Spanish citizens. Since the District Court dismissed petitioner's action against the Spanish Line under the Jones Act upon the authority of *Gambra v. Bergoty*, 2 Cir., 132 F. 2d 414, cert. den. 319 U. S. 742 (251a, 252a) and the petitioner elected to retain the respondent Spanish Line as a party with respect to the action under the general maritime law, the District Court had no jurisdiction as there was no diversity of citizenship.

In any event, since the petitioner and respondent Spanish Line were aliens, and since the action was brought on the civil side of the court, the District Court properly held that it had no jurisdiction of the subject matter of this action even though some of the respondents were not aliens.

Cunard S. S. Co. v. Smith (C.C.A. 2) 255 Fed. 846, 848;

Ex Parte Edelstein (C.C.A. 2), 30 Fed. (2d) 636, 638;

Tsitsinakis v. Simpson, Spence & Young, (S.D.N.Y.), 90 Fed. Supp. 578.

The judgments of the District Court and Court of Appeals for the Second Circuit are correct.

CONCLUSION

The judgment dismissing the complaint as to respondent International Terminal Operating Co. should be affirmed.

Respectfully submitted,

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International Terminal Operating Co.

Of Counsel:
JOHN NIELSEN.